

**CALENDAR ITEM
C21**

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04/26/05
PRC 706.1
M. Hays

**AMENDMENT OF LEASE
AND AGREEMENT AND CONSENT TO ENCUMBRANCING OF LEASE**

LESSEE:

Tahoe Yacht Harbor, LLC
P. O. Box 6510
Tahoe City, CA 96145

SECURED PARTY-LENDER:

U. S. Bank National Association
SF-NV-RELB
1 E. Liberty Street, 2nd Floor
Reno, NV 89501

AREA, LAND TYPE, AND LOCATION:

Sovereign lands in Lake Tahoe, at the Tahoe City Marina, Tahoe City, Placer County.

AUTHORIZED PURPOSE AND USE:

Operation of a commercial marina, which includes a pier, two fuel pumps and 31 mooring buoys.

LEASE TERM:

40 years, beginning July 1, 1980.

CONSIDERATION:

Five percent of "Gross Income" as defined in the Lease, derived annually from activities on or over the Lease Premises and one and one-half cents per gallon of fuel sold annually on or over the Lease Premises to a maximum of 100,000 gallons and two cents per gallon thereafter. Minimum annual rental shall be \$3,000, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

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PROPOSED AMENDMENT:

Amend PRC 706.1 to:

1. Retain ten existing mooring buoys and ten existing marker buoys, not previously authorized by the Commission, for a total of 41 mooring buoys and ten marker buoys, with the condition that the Lessee shall obtain authorization from the Tahoe Regional Planning Agency (TRPA) for the mooring buoys within two years after the adoption of the Lake Tahoe Shorezone Amendments-Draft Environmental Impact Statement (EIS) and approval of the ordinances based on the EIS.
2. Revise the minimum annual rent from \$3,000 per year to \$4,244 per year effective on July 1, 2005.

All other terms and conditions of the lease shall remain in effect without amendment.

APPROVALS REQUIRED:

Mooring and Marker Buoys:

Tahoe Regional Planning Agency
U.S. Army Corps of Engineers

OTHER PERTINENT INFORMATION:

1. Lessee owns the uplands adjoining the Lease Premises.
2. On July 1, 1980, the Commission authorized the issuance of a 40-year lease with one nine-year renewal to K & C. Marine. The Commission authorized an assignment and amendment of PRC 706.1 on October 28, 1996, at the time of the transfer of ownership, which arose from a bankruptcy action of the former Lessee K & C. Marine, to Tahoe Yacht Harbor, LLC. The authorized improvements are used in conjunction with the Lessee's commercial marina operation that is known as the Tahoe City Marina.
3. Lessee is now applying to retain ten existing mooring buoys and ten existing marker buoys that were not previously authorized by the Commission. The additional mooring buoys will bring the total authorized commercial buoy field to 41 mooring buoys. The marker buoys are used to delineate the buoy field and the fairway entrance to the marina and are not used for commercial purposes. Lessee had been unaware that these

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buoys were not included in the assignment; however, the lessee has continued to pay a percentage of gross income rent to the Commission based on the income the ten commercial buoys have generated since 1996. Staff recommends approving the retention of the mooring and marker buoys. Staff has completed a review of the rent under the terms of the lease and recommends that the minimum annual rent be revised to \$4,244.

4. U. S. Bank National Association, as Secured-Party Lender, has provided refinancing of the existing real property loan that was secured by the upland commercial property at Tahoe City Marina. The new loan is secured and recorded under a Promissory Note and Deed of Trust, dated January 25, 2005. Under the terms of the refinance, the Lessee is required to pledge their interest in PRC 706.1 as additional security. The new loan, in the amount of \$7,000,000, has a maturity date of March 1, 2015, which does not exceed the lease term. Staff has reviewed the loan documents and recommends approval of the encumbrance of the lease.
5. **Mooring and Marker Buoys:** Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15061), the staff has determined that this activity is exempt from the requirements of the CEQA as a categorically exempt project. The project is exempt under Class 3, New Construction of Small Structures; Title 2, California Code of Regulations, section 2905 (c)(3).

Authority: Public Resources Code section 21084 and Title 14, California Code of Regulations, section 15300 and Title 2, California Code of Regulations, section 2905.

6. **Agreement and Consent to Encumbrance:** Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, section 15060(c)(3)], the staff has determined that this activity is not subject to the provisions of the CEQA because it is not a "project" as defined by the CEQA and the State CEQA Guidelines.

Authority: Public Resources Code section 21065 and Title 14, California Code of Regulations, section 15378.

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7. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

EXHIBIT:

- A. Site and Location

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

MOORING AND MARKER BUOYS: FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 AS A CATEGORICALLY EXEMPT PROJECT, CLASS 3, NEW CONSTRUCTION OF SMALL STRUCTURES; TITLE 2, CALIFORNIA CODE OF REGULATIONS, SECTION 2905 (c)(3).

AGREEMENT AND CONSENT TO ENCUMBRANCING LEASE:

FIND THAT THE ACTIVITY IS NOT SUBJECT TO THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15060(c)(3) BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15378.

SIGNIFICANT LANDS INVENTORY FINDING:

FIND THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED BY THE COMMISSION FOR THE LAND PURSUANT TO PUBLIC RESOURCES CODE SECTIONS 6370, ET SEQ.

AUTHORIZATION:

AUTHORIZE THE AMENDMENT OF LEASE PRC 706.1, A GENERAL LEASE-COMMERCIAL USE, OF LANDS AS SHOWN ON EXHIBIT A ATTACHED AND BY THE REFERENCE MADE A PART HEREOF, EFFECTIVE APRIL 26, 2005, TO RETAIN TEN EXISTING MOORING BUOYS FOR A TOTAL OF 41 MOORING BUOYS AND RETAIN TEN

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EXISTING MARKER BUOYS AND APPROVE THE REVISION IN THE MINIMUM ANNUAL RENT FROM \$3,000 TO \$4,244 PER YEAR, EFFECTIVE JULY 1, 2005, ALL OTHER TERMS AND CONDITIONS OF THE LEASE WILL REMAIN IN EFFECT WITHOUT AMENDMENT.

AUTHORIZE EXECUTION OF THE DOCUMENT ENTITLED "AGREEMENT AND CONSENT TO THE COLLATERAL ASSIGNMENT AND ENCUMBRANCING OF LEASE", ON FILE IN THE OFFICE OF THE COMMISSION, IN FAVOR OF U.S. BANK NATIONAL ASSOCIATION, AS SECURED PARTY-LENDER.